IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 893 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HINDUSTAN TIMES LTD.

Versus

ASHOK VYAS

Appearance:

MR NK PAHVA for
M/S THAKKAR ASSOC. for Petitioner.
MR JJ YAJNIK for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/07/2001

ORAL JUDGEMENT

This revision application has been filed against the order dated 30-4-1998 passed by the Assistant Judge, Ahmedabad (Rural) at Gandhinagar in Civil Misc. Appeal No. 33 of 1996 whereby the appeal was allowed and the order dated 21-11-1996 passed by 2nd Jt. Civil Judge (JD), Gandhinagar dismissing the application exh. 5, was quashed and set aside and the earlier order dated 19-3-1996 passed by the same trial Court was confirmed till final disposal of the suit.

2. The respondent was working as Chief Editor in the petitioner's Company - Hindustan Times Ltd., New Delhi and he had worked for about 30 years in the petitioner Company. During service tenure, the petitioner was charge-sheeted on 10-11-1995 for certain irregularities committed by him and he was dismissed from service on 31-1-1996 by the petitioner. The the respondent filed Regular Civil Suit No. 65 of 1996 in the Court of Civil Judge (JD), Gandhinagar for declaration and injunction. The respondent also filed an application exh. 5 on 19-3-1996 and prayed for interim injunction and interim injunction was granted and the respondent was directed to be reinstated in service with effect from the date of the order i.e. 19-3-1996. The petitioner filed its replied.

3. After hearing both the parties, the application exh. 5 filed by the respondent was dismissed by the Court concerned on 21-11-1996 against that order, Civil Misc. Appeal No. 33/96 under O. 43 R. 1 (r) of the Civil Procedure Code was filed before the District Court. The District Court framed the issues; (i) whether the appellant proves that the order passed by the 2nd Jt. Civil Judge (JD), Gandhinagar below the application exh. 5 on 21-11-1996 dismissing the application was unlawful, unjust and arbitrary therefore liable to be quashed and set aside ? and (ii) what order ?. The answer to issue no. 1 was in affirmative and answer to issue no. 2 was as per the order.

4. The appellate court considered that during service of about 30 years for the first time the respondent was absent on 10th January, 1995 and that absence of 10-1-1995 was treated as unlawful. On the basis of that report, the Departmental Proceeding against the respondent was held and without hearing the respondent, he was dismissed from service which was grossly unlawful because an opportunity of hearing was not given to the respondent in the departmental inquiry and opportunity of making submission was also not given to him and hence the order of dismissal was void. The lower appellate court relied on the decisions of the

Supreme Court in the case of Union of India Vs. Mohmed Ramzan reported in AIR 1986 SC 417 and in the case of Kashinath Vs. Union of India reported in AIR 1986 SC 1988, wherein the Supreme Court held that the order of dismissal was liable to be quashed and set aside. The appellate court found that as the order of dismissal of the respondent from service was received by the respondent within the jurisdiction of Gandhinagar court and hence Gandhinagar Court had jurisdiction to hear and decide the said dispute. The provisions of the Administrative Tribunal were not applicable in the present case looking to the nature of service of the respondent as he was appointed on contract basis and the Civil Court has jurisdiction and the Civil Court concerned can hear and decide the dispute and therefore the impugned order passed by the lower court below the application exh. 5 was liable to be quashed and set aside. The lower appellate Court considered that the punishment imposed upon the respondent was harsh and disproportionate.

5. After hearing the learned counsel for the petitioner and perusing the material on record, the judgment was dictated. But later on the respondent appeared and made his submissions. Accordingly, necessary corrections were made in the judgment before signing the matter.

6. Learned counsel for the petitioner submitted that the respondent was appointed as a Reporter under the provisions of the Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The respondent was charge-sheeted on 19-8-1995 for serious charges of unauthorised absence insubordination and willful neglect of duty. The order of dismissal was passed after holding the inquiry on 31-1-1996. The respondent remained present before the Inquiry Committee. That dismissal order was communicated and served upon the respondent on 17-2-1996. After a period of one month, the respondent filed Regular Civil Suit No. 65 of 1996 before the Civil Court (JD), Gandhinagar for declaration of impugned dismissal order and inquiry proceedings as illegal and for permanent injunction. The respondent also filed an application exh. 5 in the said suit for interim injunction on the same day i.e. 19-3-1996. The Court concerned granted ex-parte interim injunction directing the petitioner to take the respondent in service. After hearing both the parties, the application exh. 5 was rejected and the ex-parte interim injunction granted earlier was vacated on 21-11-1996 against which the respondent filed Civil

Misc. Appeal No. 33/96 before the District Court, Ahmedabad (Rural) at Gandhinagar and the Extra Assistant Judge, Ahmedabad (Rural) at Gandhinagar quashed and set aside the order dated 21-11-1996 passed by the lower court and maintained earlier interim injunction order dated 19-3-1996 till final disposal of the aforesaid civil suit meaning thereby that the petitioner was directed to reinstate the respondent in service till disposal of the civil suit.

7. The contention of the learned counsel for the petitioner is that the petitioner had filed an affidavit-in-reply in Civil Misc. Appeal No. 212/96 before the District Court, wherein it is stated that the work of the respondent is governed under the Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The respondent was working as Journalist as defined u/s 2(c) (f) of the aforesaid Act. Any dispute with regard to the service condition including the present respondent would be covered under the Industrial Disputes Act, 1947. Section 3 (1) of the Industrial Disputes Act, 1947, provides as under :

> "Sec. 3 (1) :- The provisions of the Industrial Disputes Act, 1947 (XIV of 1947), as in force for the time being, shall subject to the modification specified in subsection (2), apply to, in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act."

8. Learned counsel for the petitioner submitted that the Civil Court has no jurisdiction and the dispute could have been raised only as an industrial dispute before the competent authority or the Industrial Court and the suit filed by the respondent is not maintainable at law. As such, the respondent is not entitled to get any relief as claimed in the appeal before the lower appellate court and the appellate Court has committed an error in allowing the appeal filed by the respondent. In support of his submission, the learned counsel for the petitioner has relied on the decision of the Supreme Court in the case of Jitendra Nath Biswas Vs. M.S.. Empire of India and Ceylone Tea Co. and another, reported in AIR 1990 SC 255, wherein it has been held as under :

> "Under these circumstances therefore so far as the present suit filed by the appellant plaintiff is concerned, there appears to be no doubt that civil court had no jurisdiction and the High

Court was right in coming to the conclusion."

9. It is mentioned in the affidavit-in-reply filed before the appellate Court that the Court of Civil Judge (JD) at Gandhinagar in deciding the suit filed by the respondent and that said civil suit is not maintainable on the ground of lack of territorial jurisdiction as it was agreed upon between the parties and it was accepted by both the parties that the conditions mentioned in the contract dated 22-5-1967. According to Clause 12 of the said Contract, only the competent court at Delhi would have jurisdiction to decide any dispute relating to the employment. It is also mentioned in the affidavit-in-reply filed by the petitioner before the lower appellate Court that the respondent was dismissed service from 31-1-1996 and the civil suit was filed on 19-3-1996 i.e after period of 1 1/2 months from the date of order of dismissal. No order for reinstatement after break of 1 1/2 months from the date of the order of dismissal can be passed. It is also mentioned in the said affidavit-in-reply that the reliefs claimed by the respondent seeking specific performance of the contract of personal service is barred under the provisions of Section 34 of the Specific Relief Act and hence the suit itself is liable to be dismissed and no interim injunction order could have been passed entitling the respondent to continue in service. In that respect, learned counsel for the petitioner has relied on the decision of the Supreme Court in the case of Smt. J. Tiwari Vs. Smt. Jawala Devi Vidya Mandir and others, reported in AIR 1981 SC 122, wherein it has been held as under :

"Since under those terms the appellant's services were liable to be terminated on three months' notice all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service. Judgment of this court in Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain, 1976 (2) SCC 888 is a direct authority for this conclusion."

10. Learned counsel for the petitioner further contended that the appellate court has not dealt with the contentions raised by the learned counsel for the petitioner before the appellate court. As such, the order passed by the appellate court is based on misconception and contrary to law and is not sustainable

in the eye of law and is liable to be quashed and set aside.

11. I have carefully considered the submissions made by the learned counsel for the petitioner and perused the relevant material on record.

12. It is true that the dismissal order was passed on 31-1-1996 and that was communicated to the respondent on 17-2-1996. Admittedly, the suit was filed on 19-3-1996 and the ex-parte interim injunction order was passed on the same day and after hearing both the parties, the application exh. 5 filed by the respondent was rejected on 31-11-1996. Whether the suit is maintainable at Gandhinagar Court has to be determined by the Court at the relevant time after giving reasonable opportunity of leading evidence and hearing to the parties concerned. At this stage it cannot be said that the trial Court has or has no territorial jurisdiction to decide the suit. The question as to whether civil court has jurisdiction to decide the suit filed by the respondent or jurisdiction of the civil court is barred by the provisions of the Industrial Disputes Act, 1947, can also be decided after hearing of the suit. This Court cannot decide without having sufficient material on record on this point. But from the facts and circumstances of this case, it appears that the dismissal order was passed on 31-1-1996 which was communicated to the respondent on 17-2-1996 and the suit was filed after delay of 1 1/2 months i.e. on 19-3-1996 and after 2 1/2 months from the date of dismissal of the respondent from service, the dismissal order was served and therefore interim injunction cannot be passed directing the petitioner to reinstate the respondent in service. Under these circumstances, the directing the petitioner to reinstate the respondent by way of interim order dismissal order is illegal and erroneous and is not sustainable in the eye of law. The respondent at the most would be entitled to the back wages and damages and the prayer which could have been allowed only by the trial Court at the final stage and reinstatement could not have been allowed at the initial stage. As such, I find that the order passed by the appellate court confirming the ex-parte interim injunction order which was subsequently after hearing the parties was rejected, could not have been allowed by the appellate court.

13. In view of the above discussion and in the facts and circumstances of this case, the order of the appellate court is not sustainable in the eye of law and is liable to be quashed and set aside. Accordingly, this

revision application is allowed and the impugned order dated 30-4-1998 passed below exh. 66 in Civil Misc. Appeal No. 33/96 by the Extra Assistant Judge, Ahmedabad (Rural) at Gandhinagar below the application Exh. 5 in R.C.S. No.365/96 hereby quashed and set aside. Rule is made absolute, to the aforesaid extent, with no order as to costs.

14. Learned counsel for the petitioner pointed out that the respondent has already been superannuated at the age of 58 years on 10-10-1997 under the terms and conditions of the contract entered into between the parties, the respondent was entitled to continue in service superannuation age of 58 years or 30 years' service whichever is earlier. Accordingly, 30 years' service can be said to have been completed on 20-5-1997. Even if it is assumed that the order of dismissal of the respondent from service is illegal, the respondent would be entitled to his remuneration etc. till 22-3-1997. The petitioner has deposited the amount as per the directions of the Division Bench of this Court in the contempt proceeding. But the payment of the respondent was stayed by this Court. The Registry of this Court is directed to remit the the amount deposited in this Court by the petitioner to the trial Court where the respondent will file statement of his claim regarding his emoluments for the period from the date of dismissal i.e. 31-1-1996 till 22-5-1997. After such statement is filed by the respondent, the trail Court after verifying the statement presented by the respondent, will pay the same to the respondent on furnishing the solvent security. The rest of the amount will be returned to the petitioner. The trial Court is further directed to proceed with the matter and decide the same as expeditiously as possible in accordance with law without being influenced by the observations made in this judgment.

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/JVSatwara/